Golden Gate University Law Review

Volume 37
Issue 3 *Ninth Circuit Survey*

Article 4

January 2007

Violence in the Courts: The Ninth Circuit's Attempt to Grapple With and Pin Down What Is a "Crime of Violence" in United States v. Serna

Daniel S. Cho

NOTE

VIOLENCE IN THE COURTS:

THE NINTH CIRCUIT'S ATTEMPT TO GRAPPLE WITH AND PIN DOWN WHAT IS A "CRIME OF VIOLENCE" IN *UNITED STATES v. SERNA*

INTRODUCTION

Imagine you are arrested while in possession of a firearm, and you plead guilty to a violation of 18 U.S.C. § 922(g)(1).[1] Several years earlier, you pled guilty to being in possession of a sawed-off shotgun in violation of a state statute criminalizing the possession of such weapons.[2] The government now seeks to enhance your sentence for the § 922(g)(1) violation by asking the district court to classify your previous state-court conviction as one for a "crime of violence."[3] Under current law, if the

[1] 18 U.S.C.A. § 922(g)(1) (West 2007) (providing: "[i]t shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.").

[2] A sawed-off shotgun is a shotgun, or a weapon made from a shotgun, that has been modified to have a shortened barrel of less than eighteen inches in length. *See* 26 U.S.C.A. § 5485(a) (West 2007); *see also* Cal. Pen. Code § 12020(c)(1) (2006); Cal. Pen. Code § 12001.5 (2006).

[3] *See* U.S.S.G. § 2K2.1(a)(4)(A) (2006) (applying a Base Level Offense of 20 if "the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense"); *see* U.S.S.G. § 4B1.2 (2006) (defining "crime of violence" as "any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . has as an element the use, attempted use, or

indictment, charging papers, or the written plea agreement are available in the record, the district court may find that the state-court conviction constitutes a crime of violence and double your sentence.[4] However, if the record does not contain the aforementioned documents, the district court will find the state-court conviction is not a crime of violence and your sentence will remain at the base level for the current offense.[5] As the above hypothetical demonstrates, a court's determination of whether an offense is a violent crime can significantly impact the length of sentencing for convicted defendants,[6] and possibly result in "two- and threefold increases in their presumptive sentences, often as a result of convictions that are quite old, and for which they originally received little or no jail time."[7]

Xavier Serna pled guilty to being a felon in possession of a firearm.[8] The Ninth Circuit reversed the district court's holding that Serna's prior conviction of possession of an assault weapon was a conviction of a crime of violence for sentence enhancement purposes.[9] The court held that Serna's state-court conviction for possession of an assault weapon,[10] in violation of California Penal Code § 12280(b), was not for a crime of violence, and the conviction could not be used as a sentence enhancement.[11] This decision hinged on the lack of documentation available to the Ninth Circuit regarding the underlying facts of Serna's previous state-court conviction.[12] Without more information, the Ninth Circuit could only consider the statutory definition of the crime in determining whether possession of an assault weapon constituted a crime of violence for sentencing purposes.[13] The Ninth Circuit held that the

---

threatened use of physical force against the person of another, or . . . otherwise involves conduct that presents a serious potential risk of physical injury to another.").

[4] *See* United States v. Serna, 435 F.3d 1046, 1047 (9th Cir. 2006) (applying the sentencing enhancement pursuant to U.S.S.G. § 2K2.1(a)(4)(A)).

[5] *See Serna*, 435 F.3d at 1047-49 (stating that where the record does not contain the charging papers, mere possession of a firearm is not a crime of violence).

[6] For purposes of this Note, the terms "crime of violence" and "violent crime" will be used interchangeably.

[7] Lynn Hartfield, *Feature: Challenging Crime of Violence Sentence Enhancements in Federal Court*, 30 CHAMPION 28, 28 (2006).

[8] *Serna*, 435 F.3d at 1046.

[9] *Id.* at 1047.

[10] *See* California Penal Code § 12276.1 (defining "assault weapon" to include some semiautomatic rifles, semiautomatic pistols with magazines holding more than ten rounds, and shotguns with revolving cylinders); *see also* United States v. Serna, 435 F.3d 1046, 1047 n.1 (9th Cir. 2006).

[11] *See* United States v. Serna, 435 F.3d 1046, 1049 (9th Cir. 2006).

[12] *See id.* at 1047.

[13] *See id.*

felon-in-possession offense,[14] as defined in California Penal Code § 12280, does not require proof that the possession occurred in a "context prone to violence."[15] As there was no further information in the record regarding Serna's crime, the Ninth Circuit concluded that mere possession of an assault weapon did not pose a substantial risk of physical injury to another.[16]

In reaching its decision, the Ninth Circuit embarked on an extensive analysis of the federal weapons registration requirement.[17] At no point, however, did the Ninth Circuit acknowledge what type of weapon Serna had pled guilty to possessing.[18] Confusingly, the Ninth Circuit held that Serna's possession of the unidentified weapon was not a crime of violence.[19] This conclusion was based on an analysis of legitimate and illegitimate uses of certain weapons, without knowing what weapon to scrutinize.[20]

This Note examines the limitations of the strict categorical approach; the method by which sentencing courts and courts of review determine whether an offense is a crime of violence for sentence enhancement purposes.[21] Part I of this Note examines the "crime of violence" sentence enhancement under the Federal Sentencing Guidelines ("Guidelines").[22] Part II examines the Ninth Circuit's analysis of what constitutes a crime of violence in *United States v. Serna*.[23] Part III proposes that the types of sources available to sentencing courts when analyzing whether an offense is a violent crime should be expanded based on Justice O'Connor's dissenting opinion in *Shepard v. United States*.[24] Allowing sentencing courts to consider uncontradicted evidence will provide them with the means to effectuate

---

[14] For purposes of this Note, the term "felon-in-possession" will be used to mean the possession of a firearm by a convicted felon.

[15] *See Serna*, 435 F.3d at 1049 (citing United States v. Young, 990 F.2d 469, 472 (9th Cir. 1993) (holding that a prison is a context prone to violence because "[t]he confines of a prison preclude any recreational uses for a deadly weapon and render its possession a serious threat to the safety of others.").

[16] *See id.*

[17] *See* United States v. Serna, 435 F.3d 1046, 1047-49 (9th Cir. 2006).

[18] *See id.* at 1047 (stating that Serna was convicted for possession of "an object").

[19] *Id.* at 1049.

[20] *See id.* at 1047-48.

[21] This Note will not discuss the "crime of violence" analysis pertaining to pre-trial detention under the Bail Reform Act of 1984, Pub. L. 98-473, 98 Stat. 1976, as amended by Pub. L. 99-646, 100 Stat. 3607, and codified at 18 U.S.C. §§ 3141-3150 and 3156 (involving a similar analysis of whether the offense is a "crime of violence").

[22] *See infra* notes 27-87 and accompanying text.

[23] *See infra* notes 88-132 and accompanying text.

[24] *See infra* notes 133-171 and accompanying text.

Congress's purpose in enacting federal gun laws, by punishing repeat offenders while maintaining the protections afforded to criminal defendants under the Due Process Clause and the Sixth Amendment of the United States Constitution.[25] Finally, Part IV concludes that the proposed expansion of sources will remove arbitrary determinations of "crimes of violence" based on missing or incomplete court records, leading to more consistent and uniform sentences.[26]

I. BACKGROUND

A. FEDERAL SENTENCING GUIDELINES

1. Purpose of the United States Sentencing Commission and the Sentencing Guidelines

The Sentencing Reform Act of 1984 created the United States Sentencing Commission ("Commission") and authorized the Commission to establish and implement sentencing policies for the federal criminal justice system.[27] The Federal Sentencing Guidelines "were created in order to reduce judicial discretion, to create more uniform sentences for similarly situated offenders, and to promote honesty in sentencing."[28] Thus, the purpose of the Guidelines was to "provide direction as to the appropriate type of punishment—probation, fine, or term of imprisonment—and the extent of the punishment imposed."[29]

2. Unlawful Possession of a Firearm By a Felon Is Not a Violent Crime Under the Guidelines

In *Stinson v. United States*, the United States Supreme Court held that the commentary to the Guidelines interprets and explains the provisions of the Guidelines, and therefore is authoritative, unless the

---

[25] *See infra* notes 143-166 and accompanying text.

[26] *See infra* notes 172-174 and accompanying text.

[27] *See* 28 U.S.C.A. § 991 (West 2007) (establishing the Sentencing Commission "as an independent commission in the judicial branch of the United States" for the purpose of 28 U.S.C. §991(b)(1), and "establish[ing] sentencing policies and practices for the Federal criminal justice system.").

[28] Kendall C. Burman, *Comment: Firearm Enhancements under the Federal Sentencing Guidelines*, 71 U. CHI. L. REV. 1055, 1057-58 (2004); *see also* United States v. Booker, 543 U.S. 220, 253 (2005) (holding that "Congress' basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity.").

[29] Stinson v. United States, 508 U.S. 36, 41 (1993) (citing 28 U.S.C. § 994(a)(1)(A) and (B)).

commentary violates the Constitution or a federal statute, or is plainly erroneous or inconsistent with the Guidelines themselves.[30] At issue in *Stinson* was Amendment 433, which added a sentence to the commentary to section 4B1.2 of the Guidelines Manual.[31] Amendment 433 states that "[t]he term 'crime of violence' does not include the offense of unlawful possession of a firearm by a felon."[32] Thus, the *Stinson* Court held that Amendment 433 was a binding interpretation of the Guidelines' definition of "crime of violence,"[33] and federal courts may not use a felon-in-possession offense as a sentence enhancement because it is not a crime of violence.[34]

The *Stinson* Court held that "commentary which functions to interpret a [G]uideline or explain how it is to be applied, controls,"[35] and failure to consider the commentary "would constitute an incorrect application of the [G]uidelines."[36] In reaching its holding, the Court reasoned that "the functional purpose of commentary . . . is to assist in the interpretation and application of those rules, which are within the Commission's particular area of concern and expertise and which the Commission itself has the first responsibility to formulate and announce."[37] As the Commission's interpretation of its own rules, the commentary must be given controlling weight unless it is plainly erroneous, violates the Constitution or a federal statute, or is inconsistent with the regulation.[38] The *Stinson* Court thus presumed that "the interpretations of the [G]uidelines contained in the commentary represent the most accurate indications of how the Commission deems that the [G]uidelines should be applied to be consistent with the Guidelines Manual as a whole as well as the authorizing statute."[39]

The *Stinson* holding has been criticized for increasing the power of the Commission beyond Congress's original intent.[40] Significantly, amendments to the actual Guidelines must first be reviewed by Congress

---

[30] *See id.* at 38.

[31] *See id.* at 39.

[32] U.S.S.G. § 4B1.2 cmt. n.1.

[33] *See Stinson*, 508 U.S. at 47-48.

[34] *See id.* at 47.

[35] *See* Stinson v. United States, 508 U.S. 36, 42-43 (1993) (quoting Williams v. United States, 503 U.S. 193, 203 (1992)).

[36] *See id.*

[37] *Id.* at 45.

[38] *Id.* (quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945)).

[39] *See id.* at 45.

[40] *See* Todd L. Newton, *Commentary that Binds: The Increased Power of the United States Sentencing Commission in Light of* Stinson v. United States, *113 S. Ct. 1913 (1993)*, 17 U. ARK LITTLE ROCK L.J. 155, 156 (1994).

for a period of six months before they take effect and have the force of law.[41] However, the commentary to the Guidelines is not subject to Congressional review.[42] The *Stinson* holding, therefore, allows the Commission to change the Guidelines by amending the commentary, thus avoiding the Congressional review process.[43] Despite this criticism, the *Stinson* holding remains valid, and *when applicable*, the "Guidelines have the force of law."[44]

3. *Application of the Federal Sentencing Guidelines Is Advisory and Not Mandatory*

When the Guidelines were first implemented, federal courts were required to apply the rules promulgated by the Guidelines regarding sentencing of persons convicted of federal crimes.[45] In 2005, however, the United States Supreme Court held in *United States v. Booker* that the mandatory application of the Guidelines violates the Sixth Amendment and is therefore unconstitutional.[46] Yet the *Booker* Court held that the Guidelines, while no longer mandatory, must still be consulted and considered by the district courts when sentencing based on convictions for federal crimes.[47] Although the Guidelines are merely advisory, if a district court chooses to apply the Guidelines when sentencing, the court must consider the commentary to the Guidelines as well.[48] In so holding, the *Booker* Court sought to determine Congress's likely intent in promulgating the Guidelines in light of the Court's holding that mandatory application of the Guidelines was unconstitutional.[49]

If the application of the Guidelines is no longer mandated, then the commentary to the Guidelines is also no longer binding on federal sentencing courts.[50] The district courts are only required to *consider* the Guidelines and commentary to the Guidelines when imposing sentencing

---

[41] *See* 28 U.S.C.A § 994(p) (West 2007); *see also* Newton, *supra* note 40, at 165.

[42] *See* Newton, *supra* note 40, at 164.

[43] *Id.*

[44] Blakely v. Washington, 542 U.S. 296, 324 (2004) (citing Stinson v. United States, 508 U.S. 36 (1993) (emphasis added)).

[45] *See* 18 U.S.C.A § 3553(b)(1) (West 2007).

[46] *See* United States v. Booker, 543 U.S. 220, 245 (2005) (holding that the Sixth Amendment requires juries, not judges, to find facts relevant to sentencing determinations).

[47] *See id.* at 264 (stating that the Sentencing Commission and Guidelines remain in place and should be taken into account by district courts when making sentencing determinations).

[48] *See* Stinson v. United States, 508 U.S. 36, 38 (1993).

[49] *See Booker*, 543 U.S. at 265.

[50] *See id.* at 264.

based on convictions for federal crimes.[51] Thus, the district courts are no longer bound by the commentary to the Guidelines, which state that the felon-in-possession offense is not a crime of violence.[52] Since *Booker*, courts may analyze the felon-in-possession offense using the well-established categorical approach in determining whether the felon-in-possession offense constitutes a crime of violence.[53]

B. THE CATEGORICAL APPROACH TO VIOLENT-CRIME ANALYSIS

In *United States v. Sherbondy*, the Ninth Circuit announced a strict categorical approach to determining whether a prior offense constitutes a "violent felony" for sentence enhancement purposes.[54] The strict categorical approach provides that a trial court may only look to the fact of conviction and to the statutory definition of the crime in order to determine whether the offense is a "violent felony" as defined by 18 U.S.C. § 924(e)(2)(B).[55] The *Sherbondy* strict categorical approach does not permit the trial court to inquire into the facts underlying the defendant's conviction, such as the specific conduct of the defendant in committing the offense.[56] The *Sherbondy* court restricted the trial court's inquiry by limiting the court's analysis to the categories of offenses.[57] This limitation decreases the possibility of inconsistent adjudication by avoiding reliance on subjective factors when determining the appropriateness of sentence enhancements.[58]

Three years after the Ninth Circuit's holding in *Sherbondy,* the United States Supreme Court endorsed the categorical approach in

---

[51] *See id.*

[52] *See infra* notes 54-87 and accompanying text.

[53] The majority of jurisdictions apply a categorical approach, rather than a case-by-case approach, to determine whether an offense constitutes a "crime of violence." *See* United States v. Singleton, 182 F.3d 7, 10 (D.C. Cir. 1999) (citing United States v. Carter, 996 F. Supp. 260, 261-62 (W.D.N.Y. 1998); United States v. Gloster, 969 F. Supp. 92, 94 (D.D.C. 1997); United States v. Washington, 907 F. Supp. 476, 484 (D.D.C. 1995); United States v. Aiken, 775 F. Supp. 855, 856 (D. Md. 1991); United States v. Marzullo, 780 F. Supp. 658, 662 n.8 (W.D. Mo. 1991); United States v. Phillips, 732 F. Supp. 255, 261 (D. Mass. 1990); United States v. Johnson, 704 F. Supp. 1398, 1400 (E.D. Mich. 1988)).

[54] *See* United States v. Sherbondy, 865 F.2d 996, 1009 (9th Cir. 1988) (applying the categorical approach to 18 U.S.C. § 924(e)(2)(B) which defines a "violent felony" as any crime punishable by imprisonment for more than a year that has as an element the use, attempted use, or threatened use of physical force against another or is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another).

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See id.* at 1009 n.17.

Taylor v. United States.[59] In *Taylor*, the Court held that for purposes of sentence enhancement, a court should only look to the fact of conviction because the statutory definition of the prior conviction determines whether the offense is a crime of violence.[60] Under *Taylor's* categorical approach, the sentencing court should look only to the language of the statute under which the defendant was convicted, and may not inquire into the underlying facts of the conviction.[61] The Court did, however, carve out an exception for the "narrow range of cases where a jury was actually required to find all the elements of generic burglary."[62] In those circumstances, the *Taylor* Court held that a sentencing court may look to the charging papers and the jury instructions used to convict the defendant in deciding whether the offense is a crime of violence.[63]

The Ninth Circuit has expanded the *Taylor* exception to allow a sentencing court to look to judicially noticeable facts and the judgment of conviction, as well as any signed guilty plea and transcript from plea proceedings, to determine whether an offense is a violent crime.[64] In line with this expanded approach, the Ninth Circuit held in *United States v. Sahakian* that a sentencing court may look to the elements of the offense charged or to the actual charged conduct to determine whether the conduct itself posed a serious risk of physical injury to another and was therefore a violent crime.[65] Applying the expanded categorical approach, the *Sahakian* court held that a felon-in-possession offense was not a crime of violence, relying on Amendment 433 and other circuits' similar decisions.[66]

In 2005, the United States Supreme Court settled any lingering issues of what documents a sentencing court may consider when determining whether a prior conviction was a violent crime, in *Shepard v. United States*.[67] In *Shepard*, the government sought to introduce police reports to determine whether the defendant's prior conviction was for "generic burglary," thereby subjecting the defendant to a mandatory

---

[59] *See* Taylor v. United States, 495 U.S. 575, 602 (1990).

[60] *See id.*

[61] *See id.* at 600.

[62] *See id.* at 602.

[63] *See id.*

[64] *See* United States v. Etimani, 328 F.3d 493, 503-504 (9th Cir. 2003) (citing numerous Ninth Circuit opinions which have expanded the types of documents which may be reviewed under the categorical approach set forth in *Taylor v. United States*).

[65] *See* United States v. Sahakian, 965 F.2d 740, 742 (9th Cir. 1992).

[66] *See id.* at 742 (citing several other circuits' decisions holding that the felon-in-possession offense did not constitute a crime of violence).

[67] Shepard v. United States, 544 U.S. 13, 26 (2005).

sentence enhancement.[68] The *Shepard* Court stated that the underlying purpose of the Court's decision in *Taylor* was to avoid situations where subsequent courts would hold evidentiary hearings to determine the factual basis for earlier convictions.[69] Accordingly, the *Shepard* Court held that sentencing courts were limited to the statutory definition, charging document, written plea agreements, transcripts of plea colloquy, and any explicit factual findings assented to by the defendant.[70]

Before *Shepard*, in *United States v. Young*, the Ninth Circuit announced a two-step approach to determining whether an offense constitutes a crime of violence under section 4B1.2 of the Guidelines.[71] The first step requires looking to the statutory elements of the offense charged to determine whether one of the elements of the offense is the use, attempted use, or threatened use of physical force.[72] If the offense does not contain such an element, the second step is to determine whether the actual charged conduct presented a serious risk of physical injury to another.[73] This second step restricts the analysis of the offense to the conduct charged and convicted.[74] The court may look to charging papers, indictments, jury instructions, or other facts of which the court may take judicial notice.[75] In reaching its holding, the *Young* court reasoned that looking to the actual charged conduct "is consistent with the directive contained in the Guidelines, which instructs courts to consider 'the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted,' to determine whether that conduct 'by its nature[] presented a serious potential risk of physical injury to another.'"[76] However, where the record does not contain the charging papers, jury instructions, or verdict forms, the sentencing court must adhere to the strict categorical approach outlined in *Sherbondy*, looking only to the fact of conviction and the statutory definition of the offense.[77] Thus, defendants charged with the same offense could receive different

---

[68] *Id.* at 15-16 (stating that the Armed Career Criminal Act, 18 U.S.C. § 924(e), mandates a minimum fifteen-year prison sentence for possession of a firearm after three prior convictions for violent felonies, and "makes burglary a violent felony only if committed in a building or enclosed space ('generic burglary').").

[69] *Id.* at 20.

[70] *Id.* at 26.

[71] *See* United States v. Young, 990 F.2d 469, 471 (9th Cir. 1993).

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See id.*

[76] United States v. Young, 990 F.2d 469, 471 (9th Cir. 1993) (quoting U.S.S.G. § 4B1.2 cmt. n.2).

[77] *See* United States v. Parker, 5 F.3d 1322, 1328 (9th Cir. 1993).

sentences depending on whether the trial record contains the charging papers or indictment.[78]

In *United States v. Parker*, the Ninth Circuit addressed the issue of lost or destroyed documents.[79] According to *Parker*, a sentencing court may not rely upon the charging papers alone when determining whether a prior jury conviction constitutes a violent felony.[80] Further, the *Parker* court reasoned that the Supreme Court's holding in *Taylor* requires the sentencing court to look only to documents that verify facts actually found by the jury.[81] Absent such documents, the sentencing court must adhere to the *Sherbondy* categorical approach.[82]

Parker recognized that adherence to the *Sherbondy* categorical approach, in situations where court documents were lost or destroyed, may benefit criminal defendants,[83] because some convictions that would have been considered "violent felonies," had the records been preserved, would not count as such after the destruction of the records.[84] However, the court chose to adopt an equitable sentencing principle that lessens the impact of a conviction over time, by reasoning that the problem of lost or destroyed documents will affect primarily older convictions rather than recent ones.[85] Furthermore, the court reasoned that the passage of time should dilute the effect of past conduct on punishment for present acts.[86] Consequently, if a felon is charged with unlawful possession of a firearm, the decision to enhance the sentence may depend only on whether court records were properly kept and maintained, so as to allow the sentencing court to determine what type of weapon the defendant was carrying.[87]

II. ANALYSIS

A. THE VIOLENT CRIME ANALYSIS IN *UNITED STATES V. SERNA*

In Circuit Judge Alex Kozinski's opinion in *United States v. Serna*, the Ninth Circuit held that the possession of an assault weapon is not a

---

[78] *See supra* notes 1-5 and accompanying text.

[79] *Parker*, 5 F.3d at 1322.

[80] *Id.* at 1327.

[81] *Id.*

[82] *Id.* at 1328.

[83] United States v. Parker, 5 F.3d 1322, 1328 (9th Cir. 1993).

[84] *Id.* at 1327-28.

[85] *Id.* at 1328.

[86] *Id.*

[87] *See infra* notes 114-132 and accompanying text.

crime of violence for purposes of section 4B1.2(a) of the Guidelines.[88] Section 4B1.2(a) of the Guidelines defines a "crime of violence" as "any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another, or . . . involves conduct that presents a serious potential risk of physical injury to another."[89] Because mere possession of a weapon does not involve the use, attempted use, or threatened use of physical force against another, Serna's prior conviction could only constitute a violent crime if the court determined that simple possession of an assault weapon "presents a serious potential risk of physical injury to another."[90] The court held that it did not.[91] Serna's prior conviction for possession of an assault weapon, therefore, was not considered a crime of violence and could not be used to increase his sentence under the Guidelines.[92]

1. Inherently Dangerous Weapons Have Few Legitimate Uses

In reaching its decision, the Ninth Circuit relied on the distinction between weapons with legitimate uses and those that have no lawful purpose.[93] The court found that "[s]o long as the item in question has substantial legitimate uses, its mere possession cannot, without more, constitute a crime of violence."[94] Conversely, "if the universe of uses for such an object is largely confined to illegitimate violence, [the court] can infer that the object will be used to intimidate or inflict physical injury . . . [and therefore, the] illegal possession of such [an object] . . . is a crime of violence."[95] The Ninth Circuit used this "legitimate purposes" test to distinguish "ordinary firearms" from silencers and sawed-off shotguns.[96] The court cited sporting and self-defense as examples of legitimate purposes.[97] "Unlike an ordinary firearm, [silencers and sawed-off shotguns are not] likely to serve any sporting or self-defense purpose. Thus, we have held that they 'are inherently dangerous, lack usefulness

---

[88] United States v. Serna, 435 F.3d 1046, 1049 (9th Cir. 2006).

[89] *See* U.S.S.G. § 4B1.2(a).

[90] *Serna*, 435 F.3d at 1047 (quoting U.S.S.G. § 4B1.2(a)).

[91] *Id.* at 1049.

[92] *Id.*

[93] *Id.* at 1048.

[94] United States v. Serna, 435 F.3d 1046, 1047 (9th Cir. 2006).

[95] *Id.* at 1047-48 (citing United States v. Delaney, 427 F.3d 1224, 1226 (9th Cir. 2005); United States v. Hayes, 7 F.3d 144, 145 (9th Cir. 1993); United States v. Huffhines, 967 F.2d 314, 320-21 (9th Cir. 1992)).

[96] *Serna*, 435 F.3d at 1048.

[97] *Id.*

except for violent and criminal purposes and their possession involves the substantial risk of improper physical force.'"[98] Therefore, the key determination is whether an assault weapon is more like an ordinary firearm, or more like a silencer or sawed-off shotgun.[99] Because silencers and sawed-off shotguns are required by Congress to be registered, and assault weapons are not, the Ninth Circuit ruled that assault weapons are more like ordinary firearms.[100] The Ninth Circuit concluded that possession of assault weapons does not pose a substantial risk of physical injury, and therefore, Serna's prior conviction for possession of a firearm is not a crime of violence.[101]

2. *Inherently Dangerous Weapons Must Be Registered*

The Ninth Circuit also found that Serna's prior state-court conviction was not a crime of violence on the ground that Congress did not require semiautomatic weapons to be registered.[102] The Ninth Circuit reasoned that since Congress did not require semiautomatic weapons to be registered, they are not inherently dangerous and do not pose a risk of physical injury.[103] According to the Ninth Circuit, "[t]he registration requirement reflect[s] Congress's determination that certain weapons are almost certain to be used for unlawful purposes."[104] Thus, according to the Ninth Circuit, if Congress requires a weapon to be registered, the weapon is considered to have few, if any, legitimate uses.[105] Conversely, if Congress does not require a weapon to be registered, the weapon has legitimate uses and is less likely to be used unlawfully.[106]

The *Serna* court also cited *United States v. Brazeau*, in which the Seventh Circuit held that "most firearms do not have to be registered—only those that Congress found to be inherently dangerous."[107] Thus, if Congress did not require the weapon to be registered, the weapon had some lawful use and was less likely "to lead to unlawful violence than

---

[98] *Id.* at 1048 (citing United States v. Delaney, 427 F.3d 1224, 1226 (9th Cir. 2005) (quoting United States v. Hayes, 7 F.3d 144, 145 (9th Cir. 1993)).

[99] United States v. Serna, 435 F.3d 1046, 1048 (9th Cir. 2006).

[100] *Id.* at 1049.

[101] *Id.*

[102] *See id.* at 1048 (citing 26 U.S.C. § 5845 as the comprehensive list of weapons that are required to be registered).

[103] *See id.* at 1048 (citing United States v. Jennings, 195 F.3d 795, 799 (5th Cir. 1999); United States v. Brazeau, 237 F.3d 842, 845 (7th Cir. 2001)).

[104] United States v. Serna, 435 F.3d 1046, 1048 (9th Cir. 2006).

[105] *Id.*

[106] *Id.*

[107] *Id.* at 1048 (quoting United States v. Brazeau, 237 F.3d 842, 845 (7th Cir. 2001)).

[the weapons required to be registered]."[108] The Ninth Circuit held that because Congress has never placed a "blanket registration requirement" on semiautomatic weapons, mere possession of a semiautomatic weapon does not pose a significant risk of physical injury, and therefore, mere possession is not a crime of violence.[109]

With the introduction of the Violent Crime Control and Law Enforcement Act of 1994, Congress made the possession of some semiautomatic weapons a federal crime.[110] The Act placed a ten-year ban on possession of assault weapons.[111] However, Congress allowed the ban to lapse without requiring the registration of previously banned weapons.[112] The Ninth Circuit found that because the current federal policy considers assault weapons to be on "the same footing as other non-registrable weapons," mere possession of these assault weapons, without more, cannot constitute a crime of violence.[113]

B. THE LIMITATIONS OF THE STRICT CATEGORICAL APPROACH TO VIOLENT-CRIME ANALYSIS

The *Serna* opinion illustrates an important issue regarding the current structure for analyzing whether an offense is a violent crime. Due to the restrictions placed on the Ninth Circuit by the strict categorical approach, the *Serna* court applied the registration requirement and legitimate uses test to generic semiautomatic weapons without any information regarding the specific type of weapon possessed by Serna.[114] However, a sentencing court cannot truly be assured that mere possession of a weapon is not a crime of violence without actually knowing what type of weapon the defendant possessed.[115]

The *Serna* court found that even objects that are designed to be lethal may have legitimate uses.[116] In the court's opinion, "[s]o long as the object in question has substantial legitimate uses, its mere possession

---

[108] *Id.*

[109] United States v. Serna, 435 F.3d 1046, 1049 (9th Cir. 2006).

[110] *Id.* at 1048 (citing Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (lapsed 2004)).

[111] *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322 (lapsed 2004).

[112] *Serna*, 435 F.3d at 1049.

[113] *Id.*

[114] *See* United States v. Serna, 435 F.3d 1046, 1047 (9th Cir. 2006) (stating that Serna's prior conviction was for possession of an "object").

[115] *See infra* notes 123-125 and accompanying text.

[116] *Serna*, 435 F.3d at 1047.

cannot, without more, constitute a crime of violence."[117] In addition, the court found that semiautomatic weapons were never subject to a blanket registration requirement,[118] which suggests that mere possession of such weapons does not pose the same risk of physical injury as those weapons that are subject to blanket registration requirements.[119] Although the context in which the possession occurs may constitute a crime of violence in and of itself,[120] nothing in the California Penal Code section 12280 requires proof that the possession occurred in a context prone to violence.[121] Therefore, the Ninth Circuit found that without more information about Serna's particular offense, mere possession of an assault weapon is not a crime of violence.[122]

According to the Guidelines,[123] the felon-in-possession offense is not a crime of violence unless the firearm falls under the definition of "firearm" in 26 U.S.C. § 5845(a).[124] This means that in a case of mere possession of a firearm by a felon, the specific type of weapon possessed can be determinative of whether the possession offense is a violent crime.[125] However, under the strict categorical approach outlined in *Sherbondy* and *Taylor*, the sentencing court is not permitted to inquire as to the specific facts underlying the conviction.[126] Therefore, if the statutory definition of the possession offense does not contain an element

---

[117] *Id.*

[118] *Id.* at 1048.

[119] *See id.* at 1049.

[120] United States v. Serna, 435 F.3d 1046, 1049 (9th Cir. 2006) (citing the possession of melted-down shaving razors in prison to be a "crime of violence" because of the inherent danger of possessing such items in the context of a prison environment).

[121] *Id.*

[122] *Id.*

[123] *See* U.S.S.G. § 4B1.2 n.1 (stating that a "[c]rime of violence does not include the offense of unlawful possession of a firearm by a felon, unless the possession was of a firearm described in 26 U.S.C. § 5845(a)).

[124] 26 U.S.C. § 5845(a) defines a "firearm" to include sawed-off shotguns, machineguns, weapons with silencers, and destructive devices.

[125] While most jurisdictions have held that mere possession of a firearm is not a crime of violence, various jurisdictions have held that possession of a firearm combined with certain conduct does constitute a "crime of violence." *See* Mary E. McDowell, *The Importance of Structural Analysis in Guideline Application*, 5 FED. SENT'G REP. 112 (2002) (citing United States v. Williams, 892 F.2d 296 (3d Cir. 1989); United States v. McNeal, 900 F.2d 119 (7th Cir. 1990); United States v. Walker, 930 F.2d 789 (10th Cir. 1991); United States v. Goodman, 914 F.2d 696 (5th Cir. 1990); United States v. Cornelius, 931 F.2d 490 (8th Cir. 1991)).

[126] *See* United States v. Sherbondy, 865 F.2d 996, 1009 (9th Cir. 1988) (applying the categorical approach to 18 U.S.C. § 924(e)(2)(B), which defines a "violent felony" as any crime punishable by imprisonment for more than a year that has as an element the use, attempted use, or threatened use of physical force against another or is burglary, arson, or extortion, involves the use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another); *see also* Taylor v. United States, 495 U.S. 575, 600 (1990).

of physical force, and if the record is silent as to the type of weapon possessed, the *Parker* holding restricts the sentencing court's analysis to the strict categorical approach.[127]

Under the *Sherbondy* strict categorical approach to the possession offense with which Serna was charged,[128] the offense could not be considered a crime of violence under section 4B1.2(a)(1) of the Guidelines because the statute did not have as an element the use, attempted use, or threatened use of physical force against the person of another.[129] In addition, because the record did not contain any information regarding the type of assault weapon unlawfully possessed by Serna, or the context in which the possession occurred, the court was limited to the strict categorical approach.[130] Lastly, because the record did not contain the charging papers or any explicit factual findings by the trial judge, under *Shepard* the Ninth Circuit could not consider any information other than the statutory definition of the offense.[131] Therefore, regardless of how dangerous the weapon was that Serna was found in possession of, his sentence could not be enhanced under *Sherbondy's* strict categorical approach.[132]

III. EXPANDING THE AVAILABLE SOURCES TO GUIDE THE VIOLENT CRIME ANALYSIS

The determination of whether a prior felon-in-possession conviction constitutes a crime of violence may hinge on what information is available in the record for the consideration of the sentencing court.[133] This determination can have a significant impact on the length of a criminal sentence.[134] In the interests of justice and accurate sentencing, such an important determination should not turn on whether the state properly kept and maintained court records.

---

[127] *See* United States v. Parker, 5 F.3d 1322, 1328 (9th Cir. 1993).

[128] Cal. Pen. Code § 12280(b) (2006).

[129] *See* Cal. Penal Code § 12280(a) (2006) (prohibiting the manufacture, distribution, sale, or possession of any assault weapon).

[130] *See* United States v. Serna, 435 F.3d 1046, 1047 (9th Cir. 2006) (applying United States v. Young, 990 F.2d 469, 472 (9th Cir. 1993)).

[131] *See* Shepard v. United States, 544 U.S. 13, 16 (2005).

[132] *See* United States v. Young, 990 F.2d 469, 472 (9th Cir. 1993) (restricting the sentencing court's analysis to the statutory definition of the crime and to the conduct "expressly charged" in the indictment); *see also Shepard*, 544 U.S. at 16 (limiting the sentencing court's examination to "the statutory definition [of the offense], charging document[s], written plea agreement[s], transcript[s] of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.").

[133] *See supra* notes 114-132 and accompanying text.

[134] *See Serna*, 435 F.3d at 1047 (applying the sentencing enhancement pursuant to U.S.S.G. § 2K2.1(a)(4)(A)).

A. JUSTICE O'CONNOR'S DISSENTING OPINION IN *SHEPARD V. UNITED STATES*

The current case law in the Ninth Circuit restricts sentencing courts to a categorical analysis of the statutory offense and limits the inquiry to the charging papers, jury instructions, and judicially noticeable facts.[135] Because these restrictions can result in arbitrary sentencing based on missing court records and analysis of generic weapons,[136] sentencing courts and courts of review should be allowed to employ a more flexible approach based on Justice O'Connor's dissenting opinion in *Shepard v. United States*.[137]

In *Shepard*, the majority restricted the sentencing court's analysis to the statutory definition of the offense and judicially noticeable facts.[138] The Court rejected the government's contention that a sentencing court should be permitted to look to police reports and complaint applications.[139] Criticizing the majority opinion as one that "substantially frustrate[s] Congress' scheme for punishing repeat violent offenders who violate federal gun laws,"[140] Justice O'Connor's dissenting opinion suggested that a sentencing court's analysis should be expanded to include "*any* uncontradicted, internally consistent parts of the record from the earlier conviction."[141] Under this expanded list of sources, a sentencing court would be allowed to consider police reports and complaint applications for uncontradicted facts regarding the prior conviction.[142]

B. THREE REASONS TO EXPAND THE AVAILABLE SOURCES TO INCLUDE POLICE REPORTS AND UNCONTRADICTED EVIDENCE

1. Effectuating the Purpose of Federal Gun Laws

Restricting the sentencing court's analysis to the statutory definition and charging documents frustrates Congress's underlying purpose in enacting federal gun laws: to punish repeat violent offenders.[143] The

---

[135] *See* United States v. Parker, 5 F.3d 1322, 1327 (9th Cir. 1993).

[136] *See supra* notes 79-132 and accompanying text.

[137] *See* Shepard v. United States, 544 U.S. 13, 28 (2005) (5-3 decision) (O'Connor, J., dissenting).

[138] *Id.* at 16.

[139] *See id.* at 23.

[140] *Id.* at 28 (5-3 decision) (O'Connor, J., dissenting) (emphasis in original).

[141] *Id.* at 31 (2005) (5-3 decision) (O'Connor, J., dissenting) (emphasis in original).

[142] *Id.*

[143] *See* Shepard v. United States, 544 U.S. 13, 35 (2005) (5-3 decision) (O'Connor, J.,

current restrictions placed on sentencing courts force these courts to ignore relevant and uncontradicted evidence regarding prior convictions and allow defendants to benefit from the unavailability of court records.[144] As Justice O'Connor stated, the sentencing court should not be forced to "feign agnosticism about clearly knowable facts."[145] A defendant's sentence should not depend on whether a State's "record retention policies happen to preserve the musty 'written plea agreements' and recordings of 'plea colloquies' ancillary to long-past convictions."[146]

2. *Expanding the Sources to Include Uncontradicted Evidence Does Not Violate the Constitution*

Allowing sentencing courts to consider clear and uncontradicted evidence written in police reports does not run afoul of any due process rights or the right to a jury trial as provided by the Constitution.[147]

In *Apprendi v. New Jersey*, the trial judge conducted an evidentiary hearing following a guilty plea.[148] The judge concluded that the evidence supported a finding that the crime was motivated by racial bias, thereby enhancing Apprendi's sentence above the statutory maximum.[149] The United States Supreme Court reversed the sentence, holding that under the Sixth Amendment, any fact, other than the fact of a prior conviction, that increases the sentence beyond the statutory maximum, must be found by a jury beyond a reasonable doubt.[150]

Four years later, in *Blakely v. Washington*, the Supreme Court affirmed the *Apprendi* ruling and held a Washington State sentencing procedure unconstitutional because it allowed judges to determine facts

---

dissenting).

[144] *See id.* at 29 (5-3 decision) (O'Connor, J., dissenting).

[145] *Id.* at 35 (5-3 decision) (O'Connor, J., dissenting).

[146] *Id.* at 36-37 (5-3 decision) (O'Connor, J., dissenting).

[147] U.S. CONST. amend. XIV. (providing that "[no State shall] deprive any person of life, liberty, or property, without due process of law."); U.S. CONST. amend. VI. (providing that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."); *see Shepard*, 544 U.S. at 37-38 (5-3 decision) (O'Connor, J., dissenting).

[148] Apprendi v. New Jersey, 530 U.S. 466, 470 (2000).

[149] *Id.* at 471 (increasing Apprendi's sentence from a maximum of twenty years to a maximum of thirty years).

[150] U.S. CONST. amend. VI. (providing that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."); *Apprendi*, 530 U.S. at 490 (finding a New Jersey hate crime statute unconstitutional because it authorized a judge to increase the maximum sentence by finding aggravating circumstances by a preponderance of the evidence).

that gave rise to sentences above the statutory maximum.[151] In *Blakely*, the trial judge sentenced the defendant to three years above the maximum standard range based on a finding that he had acted with deliberate cruelty in kidnapping his estranged wife.[152]

In *Cunningham v. California*, decided in 2007, the Court struck down California's determinate sentencing law because it authorized a judge, rather than a jury, to find facts allowing the imposition of an upper-term sentence.[153] In *Cunningham*, the trial judge found six aggravating circumstances, including the vulnerability of the victim and that Cunningham's violent conduct posed a serious danger to the community.[154] As a result, Cunningham was sentenced to the upper-term limit of sixteen years.[155]

Although the Supreme Court has continued to apply the *Apprendi* rule requiring juries, not judges, to determine facts that give rise to sentences above the statutory maximum,[156] the Court has also held that "when a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding."[157] In the same vein, unchallenged factual determinations in prior convictions, made with procedural safeguards attached, mitigate any due process or Sixth Amendment concerns "otherwise implicated in allowing a judge to determine a 'fact' increasing punishment beyond the [statutory] maximum."[158] As such, where facts are admitted in a guilty plea, and those facts are uncontradicted during sentencing, the sentencing court should be free to examine those facts during sentencing without running afoul of the Constitution.

Allowing sentencing courts to examine police reports for uncontradicted facts is also outside the applicable scope of the *Apprendi*, *Blakely*, and *Cunningham* holdings, as those cases dealt with a judicial determination of the subjective intent of the defendant, rather than objective facts.[159] The facts found in *Cunningham* were "neither inherent

---

[151] *See* Blakely v. Washington, 542 U.S. 296, 305 (2004) (holding that Washington's sentencing procedure did not comply with the Sixth Amendment).

[152] *Id.* at 303.

[153] Cunningham v. California, No. 05-6551, 2007 U.S. LEXIS 1324, at *43 (Jan. 22, 2007).

[154] *Id.* at *13.

[155] *Id.* at *11.

[156] *Id.* at *24.

[157] Blakely v. Washington, 542 U.S. 296, 310 (2004).

[158] Apprendi v. New Jersey, 530 U.S. 466, 488 (2000) (distinguishing *Apprendi* from Almendarez-Torres v. United States, 523 U.S. 224 (1998)).

[159] *See supra* notes 148-155 and accompanying text.

in the jury's verdict nor embraced by the defendant's plea."[160] When a defendant pleads guilty to unlawfully possessing a firearm, the defendant must necessarily be admitting to possessing the firearm that he was charged with possessing. As in *Apprendi*, *Blakely*, and *Cunningham*, the defendant may challenge any determinations made by the judge as to the defendant's subjective intent in possessing the firearm,[161] but by pleading guilty to the possession offense, the defendant must admit to possessing the particular firearm.

In order to determine what weapon the defendant pled guilty to possessing, a judge would not have to conduct any additional or independent factfinding, or any subjective analysis of previously found facts. A sentencing court could simply look to the police report to determine the type of weapon that the defendant was charged with and later pled guilty to possessing. If the defendant wanted to challenge the weapon determination, the defendant could do so under the sentence appeal procedures already in place.[162]

When considering police reports to determine what type of weapon the defendant pled guilty to possessing, the main concern of the sentencing court should be the fairness to the defendant. However, "there is nothing unfair (and a great deal that is positively just) about recognizing and acting upon plain and uncontradicted evidence that a defendant, in entering his prior plea, knew [what] he was being prosecuted for and was pleading guilty to."[163] So long as the prior conviction and guilty plea were established through procedures satisfying the fair-notice, reasonable-doubt, and jury-trial guarantees, the sentencing court should not be prevented from considering evidence that the defendant did not contest, and that formed the basis of the guilty plea.

3. *Allowing Uncontradicted Evidence Will Not Impose Any Additional Burden on Sentencing Courts*

Taylor itself did not establish rules for cases involving guilty pleas and the list of available sources for the sentencing courts provided by the *Taylor* exception was not intended to be exhaustive.[164] Allowing sentencing courts to consider police reports and uncontradicted evidence is consistent with *Taylor's* central purpose, which was to effectuate

---

[160] Cunningham v. California, No. 05-6551, 2007 U.S. LEXIS 1324, at *11 (Jan. 22, 2007).

[161] *See supra* notes 148-155 and accompanying text.

[162] *See* FED. R. CRIM. P. 32(j) (providing for a defendant's right to appeal and requiring the court to advise the defendant of that right to appeal after sentencing).

[163] Shepard v. United States, 544 U.S. 13, 36 (2005) (5-3 decision) (O'Connor, J., dissenting).

[164] *See id.*

Congress's categorical approach to sentencing.[165] Furthermore, allowing sentencing courts to consider police reports and uncontradicted evidence does not run afoul of *Taylor's* other purpose of avoiding "the impracticality of mini-sentencing-trials featuring opposing witnesses perusing lengthy transcripts of prior proceedings."[166] Consideration of uncontradicted and undisputed evidence, which form the basis for the defendant's guilty plea, would not lead to any need for opposing witnesses or submission of counter-evidence.

C. APPLYING THE EXPANDED SOURCES TO SERNA'S CASE

An examination of the police report and complaint application for uncontradicted facts may have led to a different outcome in *Serna*, but surely an examination of such documents would lead to less arbitrary and more consistent results when analyzing felon-in-possession convictions as crimes of violence. Under the current framework of analysis, the sentencing court must first look to the statutory definition of the offense to determine whether the offense contains an element of the use of force.[167] If the offense does not contain such an element, the court must determine whether the actual charged conduct presented a serious risk of physical injury to another.[168] If the defendant was found guilty by a judge or jury, the sentencing court may look to the charging papers, jury instructions, and explicit factual findings to determine whether the actual charged conduct presented a serious risk of physical injury to another.[169] Under an analysis incorporating the use of uncontradicted evidence, when the defendant pled guilty to the felon-in-possession offense, the sentencing court may look to the sources stated above, as well as the police report and complaint applications, to determine what type of weapon the defendant pled guilty to possessing.

If sentencing courts were allowed to look to the uncontradicted factual evidence contained in the police report, courts of review would not be forced to engage in an unnecessary analysis of registration requirements and illegitimate uses of unspecified objects.[170] Sentencing

---

[165] *See id.* at 36 (5-3 decision) (O'Connor, J., dissenting) (stating that "[t]he issue most central to *Taylor* was the need to effectuate Congress' 'categorical approach' to sentencing recidivist federal offenders-an approach which responds to the reality of a defendant's prior crimes, rather than the happenstance of how those crimes 'were labeled by state law.'").

[166] *Id.* at 36 (5-3 decision) (O'Connor, J., dissenting) (citing Taylor v. United States, 495 U.S. 575, 601 (1990)).

[167] *See* United States v. Young, 990 F.2d 469, 471 (9th Cir. 1993).

[168] *See id.*

[169] *See id.*

[170] *See* United States v. Serna, 435 F.3d 1046, 1047-48 (9th Cir. 2006).

courts and courts of review could instead look to the statutory definition of the possession offense to determine whether the language of the statute contains an element of force, and then look to the uncontradicted evidence to determine what type of weapon was illegally possessed, if such information was not found in the trial record. If the sentencing court knew what type of weapon Serna possessed, it could have more adequately determined whether possession of such a weapon posed a serious risk of physical injury to another. Such certainty would create a more uniform application of the Guidelines in deciding the length of a sentence in felon-in-possession situations.[171]

IV. CONCLUSION

The proposed expansion of sources to aid the analysis of the felon-in-possession offense as a violent crime should be narrowly applied to cases where the defendant pled guilty to the possession offense and the type of weapon possessed is missing from the trial court's record.[172] Properly applied, this analysis will relieve sentencing courts from having to conduct time-consuming examinations of weapons registration requirements and illegitimate uses for unspecified weapons.[173] Furthermore, the proposed expansion of sources will remove the arbitrary determination of "crimes of violence" based on missing or incomplete court records, leading to more consistent and uniform sentences.[174]

DANIEL S. CHO*

[171] *See id.* at 1047.

[172] *See supra* notes 156-163 and accompanying text.

[173] *See supra* notes 170-171 and accompanying text.

[174] *See supra* notes 123-171 and accompanying text.

* J.D. Candidate, 2008, Golden Gate University School of Law, San Francisco, CA; B.A. Ethnic Studies, 2000, University of California, Berkeley, CA. I would like to thank my editors Susana Garcia, Sahana Murthy, Raymond Yu and Ashling McAnaney, and my faculty advisors Professor Helen Chang and Professor Peter Keane for their patience and tireless dedication. I could never have made it this far without the love and support of my wife, Ashley, and my daughter, Hannah. This Note is dedicated to my parents, who gave up their dreams so that I can live mine.